Supreme Court, U.S.
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No. ____

In The

Supreme Court of the United States

October Term, 1996

MARY ANN LOVELL,

Petitioner,

v.

GARY HURFORD, President; RAY L. HUNT, Chairman; HUNT OIL COMPANY,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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February 14, 1997

65 pp

QUESTIONS PRESENTED

The question is whether the United States Court of Appeals was accurate in affirming the district court dismissal of the captioned cases essentially for the reasons given by it in its memorandum and order. Is the petitioner justified in alleging constitutional violations of the respondent based on "Analysis," Memorandum and Order, United States District Court, Eastern District of Louisiana, Minute Entry, Chief Judge Sear, June 13, 1996, Civil Action No. 96-584: "It is axiomatic that the purpose of Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief: a Rule 12(b)(6) motion may not be used to resolve a contest about the facts or the merits of a case. 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 (1990) (*citing Murray v. Amoco Oil Co.*, 539 F.2d 1385 (5th Cir. 1976)). A court which considers a motion for a Rule 12(b)(6) dismissal must look only at the pleadings and accept the well-pleaded allegations in them as true. *St. Paul Ins. of Bellaire v. Afia Worldwide Ins.*, 937 F. 2d 279 (5th Cir. 1991); *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 174-175 (1965). The complaint's allegations "should be construed favorably to the pleader," *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), and it should not be dismissed for failure to state a claim unless there is no doubt that the plaintiff can prove. . . . *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

PARTIES TO THE PROCEEDING

All parties to the proceeding in the court of appeals are identified in the caption. Pursuant to Supreme Court Rule 29.1, petitioner states there are no parent or subsidiary companies of Mary Lovell Company to be listed.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

JURISDICTION 1

STATUTES INVOLVED 4

STATEMENT OF THE CASE 8

SUMMARY ARGUMENT 13

ARGUMENT 17

REASONS FOR GRANTING THE PETITIONS

The United States Court of Appeals For The Fifth Circuit December 26, 199ℓ erred in the court's decision, and judgment entered under FRAP 36 Regarding: Fifth Circuit Statement on Petition for Rehearing or Rehearing En Banc.

No. 96-30696 *Lovell v. Hurford;* USDC No. 96-CV-1317-G; 96-CV-1184-G; 96-CV-1181-G; 96-CV-1180-G; 96-CV-1178-G; 96-CV-584-G; appeals from the United States District Court, For the Eastern District of Louisiana (96-CV-584-G).

The United States District Court erred in granting the defendants' motion to dismiss in Civil Action 96-584, Minute Entry, June 13, 1996, "Inasmuch as the parties to these lawsuits are citizens of the state, the court lacks diversity jurisdiction over these disputes. See 28 U.S.C. § 1332. Thus dismissal of these four actions is appropriate."

CONCLUSION AND PRAYER 22

TABLE OF AUTHORITIES

Pages

CASES

Bank of California v. Portland, 58 S Ct 476..... 14

Conley v. Gibson, 355 U.S. 41 (1957) i

Cussen v. Southern California Sav. Bank, 133 Cal 534, 65 P 1099 13

Dunham v. Dunham, 204 Conn. 303, 528 A. 2d 1123 (1987) 22

Federal Rules of Evidence Rule 402..... 4

Fisk v. Germania Nat. Bank, 1888, 40 La. Ann 820. 5 So. 532..... 15

Levy v. Pike, 1873, 25 La. Ann. 630..... 13

Morast v. Lance, 807 F. 2d 926 (11th Cir. 1987) (nationally chartered banks are not state actors under Section 1983) 4, 11, 13

Murray v. Amoco Oil Co., 539 F. 2d 1385 (5th Cir. 1976).....i

National Safe Deposit Co. v. Stead, 232 U.S. 58, L Ed 504, 34 S Ct 209.....14, 15

Roberts v. Stuyvesant Safe Deposit Co., 123 NY 57, 25 NE 294..... 15

Scheuer v. Rhodes, 416 U.S. 232 (1974) i

St. Paul Ins. of Bellaire v. Afia Worldwide Ins., 937 F. 2d 274, 279 (5th Cir. 1991).....i

United States v. Jacobsen, 466 U.S. 109 (1984)..... 4

Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172 (1965).....i

Watts v. Graves, 720 F. 2d 1416 (5th Cir. 1983) 4, 11, 13

TABLE OF AUTHORITIES – Continued

Page

28 U.S.C. § 636(b)(1)(B) 10

28 U.S.C. § 1291 ..... 1, 8

28 U.S.C. § 1330 5

28 U.S.C. § 2241 1

28 U.S.C. § 2242 1

Louisiana Statutes – Annotated Revised Statutes Sections 6:1 to 8: End 13

La CCP Art. 2893 7

La CCP Art. 3664 9

La CCP Art. 5127 4

La CCP Art. 42 & 43; 1871 to 1883; 2888; 1392 ..... 5, 7

La CCP Art. 5121.1 4

R. S. 6: 769 16

Interstate Commerce Commission (ICC) 6

The Hepburn Act of 1906 6

The Transportation Act of 1920 6

The Federal Trade Commission (FTC) Sections 2, 3, 7, 8 ..... 6, 7

TABLE OF AUTHORITIES – Continued

Page

The Sherman Act 6, 7

Article VI in the Constitution and Justice Process 7

Amendment XIV (1868) Section 1 7

Constitution: The Fifth Amendment 8

The Fourteenth Amendment 7

Uniform Commercial Code, in Section 1-20 8

Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 (1990) i

A. D. Neale, The Antitrust Laws of the U.S.A., 2nd ed. (London: Cambridge University Press, 1970) 7

PETITION FOR A WRIT OF CERTIORARI

JURISDICTION

Jurisdiction vests in the United States Supreme Court. The United States Supreme Court is the highest court in the land. It has both original and appellate jurisdiction. Its appellate jurisdiction is the Court's main function.

Our Constitution is the law in according to Rules of the Supreme Court of the United States, Adopted December 5, 1989, Effective January 1, 1990, Rule 17, 28 U.S.C. §1291; Rule 20.4.(a), 28 U.S.C. §§2241 §§2242, and in particular with the provision in the last paragraph of §2242 requiring a state of the "reasons for not making application to the district court of the district in which the applicant is held." As time passes, new conditions or pendulum swings in political opinion lead to changes in judges' views, and since "judges, after all, are rulers," the norms that judges hold can become translated into law through the process of deciding cases and writing opinions.

Americans tend to think of the courts, and especially the United States Supreme Court, as the enforcers of the constitution. As Chief Justice Charles Evans Hughes (1862-1948) said, "We are under a Constitution, but the Constitution is what the judges say it is."

Before the oil embargo in 1973, energy was not a very important or controversial issue. But after Arab oil-exporting, Americans became aware of the importance of energy in general and oil came to be viewed as a threat to economic and political independence. As a result, there

have been many proposals for reducing our demand for foreign oil.

Energy includes the production of such traditional energy sources such as solar and geothermal energy. It also includes the transportation and distribution networks that are used to deliver some of these energy sources to their ultimate consumers.

One important function of regulatory agencies is rate-making, the establishment of prices that regulate firms can charge for their services. Under the Interstate Commerce Act, the ICC could declare a given rate illegal, but it could not set a maximum rate that could be charged for a specific service.

The United States Court of Appeals, Fifth Circuit erred in affirming the district court's dismissal of the captioned cases essentially for the reasons given by it in its memorandum and order.

"Following consolidation of the captioned cases, the district court considered defendant's motions to dismiss pursuant to Rule 12(b)(6) and granted each motion dismissing plaintiff's claims. We have carefully reviewed the briefs on file and the record and are satisfied that the reasons given by the district court in its Memorandum and Order filed June 14, 1996 in the consolidated matters are correct." Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent, except under the limited circumstances set forth in Local Rule 47.5.4.

To grant respondents judgment in No. 96-30696 entered December 26, 1996 providing that plaintiff-appellant pay to defendants-appellees the costs of appeal is a violation of petitioner's constitutional rights.

The United States District Court was correct in it Ruling: "Page 5, Memorandum and Order The Honorable Chief Judge Sear, Minute Entry, June 13, 1996:

"It is axiomatic that the purpose of Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief: a Rule 12(b)(6) motion may not be used to resolve a contest about the facts or the merits of a case . . . "

But on the contrary, the court ruling in regards to page 9, 2nd paragraph: "It is ordered that defendants' motions to dismiss in Civil Action No. 96-584, Civil Action No. 96-1178, Civil Action No. 96-1180, Civil Action No. 96-1181, Civil Action No. 96-1184 and Civil Action No. 96-1317 are granted," is inaccurate and violates my civil an constitutional rights.

Therefore, it is on the bases of the judgment that petitioner appeals to the Supreme Court of the United States for a decision based on knowledge and merits of all filed suits involving the lead claim against HUNT OIL COMPANY.

The federal government derives its power to regulate business from the commerce clause of the United States Constitution. The commerce clause states that Congress has the power to regulate commerce "among the several states."

STATUTES INVOLVED

Memorandum and Order The Honorable Chief Judge Sear, Minute Entry, June 13, 1996, Page 8 Line 20: "A warrantless search of a person's safety deposit box by a state actor can constitute a violation of the Fourth Amendment. *Watts v. Graves*, 720 F.2d 1416, 1419 (5th Cir. 1983) (emphasis added). In this case, however, Lovell is unable to allege the presence of a state actor. Because I must construe the complaint liberally, I must consider whether Planters is a state action within Section 1983. I find that it is not. See *Morast v. Lance*, 807 F.2d 926, 930 (11th Cir. 1987) (nationally chartered and regulated banks are not state actors under Section 1983).

In Nos. 96-30696; 96-30719; 96-31163; and 96-30951 the Federal Rules of Evidence Rule 402, Foreign documents See §2435, and the Fourth Amendment of the United States Constitution.

The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). This provision proscribes only governmental action. Id.

McInnis Insurance Agency, Inc., P. O. Box 610, 119 Pearl Street, Minden, LA 71058-0610, General Insurance, 911 West Main Suite B, Homer, Louisiana 71040, Letter dated May 4, 1995 from Mary Ann Lovell, petitioner: "Your company want release from said bond in accordance with the law: La CCP Art. 5127." In order for the bond to be effective it had to be filed in accordance with La CCP Art. 5121.1. Western Surety Company, Office of

General Counsel, P. O. Box 5077, 101 S. Phillips Avenue, Sioux Falls, SD 57117, Phone: (605) 330-7400, Legal/ Claim/ Public Affairs Fax 1 -(605) 3307401, Underwriting Fax 1-605-355-0357. No. 96-31163, *Lovell v. Newell*, USDC No. 96-CV-1209-S; Second Judicial District, Claiborne Parish, Homer, Louisiana, Case No. 33142, 25 November, 1996.

Federal district courts have "limited" jurisdiction in that they have only such jurisdiction as is explicitly conferred by federal statutes. 28 U.S.C. §1330 et seq. The United States District Court of Eastern District of Louisiana has jurisdiction over Hunt Oil Company registered in the State of Louisiana the venue of the properties argued in the documentation in accordance with Louisiana Code of Civil Procedure 1993 Edition CCP Art. 42 & 43; 1871 to 1883; 2888; 1392, and in this case pursuant to U.S.C. §1291.

Energy is a very important word that is used to describe a diverse sector of the economy. It includes the production of such traditional energy sources such as solar and geothermal energy. It also includes the transportation and distribution networks that are used to deliver some of these energy sources to their ultimate consumers. For instance, natural gas is transported by pipeline from the producing well to a local gas utility and finally to households and businesses.

One important function of regulatory agencies is rate-making, the establishment of prices that regulated firms can charge for their services. Under the Interstate Commerce Act, the ICC could declare a given rate illegal,

but it could not set a maximum rate that could be charged for a specific service.

Hunt Oil Company must be licensed by the Interstate Commerce Commission (ICC) if it transports goods or persons over state lines, and also has to be licensed by the commerce commission of the various states where it operates. The license designates the routes and territory over which the common carrier is allowed to travel and do business. The Hepburn Act of 1906 empowered the ICC to set maximum rates. The Transportation Act of 1920 went even further by permitting the ICC to set minimum and exact rates as well as maximum rates.

The Federal Trade Commission (FTC) has the responsibility of investigating alleged violations of Sections 2, 3, 7, and 8 of the Clayton Act and has the authority to issue cease and desist orders to stop certain illegal practices and activities. The trust device became obsolete even before the Sherman Act was passed! The term "antitrust" is still used to describe laws that promote competition, and federal enforces of the antitrust laws are still referred to as "trustbusters." The FTC's original enforcement emphasis was against deceptive advertising. Many of the states had statutes that outlawed deceptive advertising, but enforcement varied from state to state. This sort of violation obviously injured both competitors and consumers, so it was probably a good place to start. While the FTC's approach to unfair methods of competition has become much broader over the years, especially since the 1970's, it continues to be alert for false and deceptive advertising.

The Sherman Act was supplemented in 1914 by the Clayton and the Federal Trade Commission acts. These laws were enacted in the belief that the Sherman Act could attack existing trusts, but not prevent the creation of new ones *A. D. Neale, The Antitrust Laws of the U.S.A., 2nd ed. (London: Cambridge University Press, 1970).* The congressional compromise was the passage of both the Clayton and the Federal Trade Commission acts. The former prohibited specific practices whose effect "may be substantially to lessen competition," while the latter empowered the FTC to outlaw "unfair methods of competition."

With what power does Hunt Oil Company have to change names and parties on oil wells, and division orders with subsidiaries and unauthorized persons on facial valid, but illegal documents. Is this a violation of the Code CCP Art. 2893 Louisiana Code of Civil Procedure (1993). Can Hunt continue to pay off parties to cover up their misconduct?

Hunt Oil Company is registered in the State of Louisiana the venue of the properties argued in the documentation in accordance with Louisiana Code of Civil Procedure (1993) CCP Art. 42 & 43; 1871 to 1883; 2888; 1392, and in this case pursuant to U.S.C. §1291.

Article VI is a very important Article in the Constitution and Justice Process. It is the Law of the Land, Federal Law.

Amendment XIV (1868) Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fifth Amendment to the Constitution pertains to actions undertaken by the federal government, while state government actions are covered under the Fourteenth Amendment.

For the commercial contracts which it covers, the Uniform Commercial Code, in Section 1-20 (11) defines a contract as the "total legal obligation which results from the parties' agreement as affected by this Act and any other applicable rules of law." The agreement is simply the bargain agreed upon by the parties. Section 1-201 (3) of the UCC makes it clear that an agreement need not be in writing and signed by the parties.

This case involves the Constitution setting forth the fundamental rights of citizens. It also defines the limits with which the federal and the state government may pass laws. 28 U.S.C. §1291, Rule 13 of the Supreme Court of the United States, Adopted December 5, 1989, effective January 1, 1990.

STATEMENT OF THE CASE

Petitioner filed suit in Eastern District of Louisiana on February 15, 1996, against respondents: Gary Hurford,

Ray L. Hunt and Hunt Oil Company 96-584-G for honoring illegal contracts filed in the Second Judicial District, Claiborne Parish, Louisiana.

Hunt tried unconstitutional to divide the estate in accordance with a Negative Opinion filed here in the State of Louisiana, 2nd Judicial District, Claiborne Parish Courthouse, Probate Docket 7734 by disbursing some of the estate to parties not rightful parties in accordance to the last will and testament of the decedent, Mrs. Meaker Glover White, expired February 29, 1992. The allegations establishes that Hunt, has continued inappropriately to hold on to without proper cause "fruits, assets and distributions" In Case of Re Mrs. Meaker Glover White . . . By Mary Ann Lovell violating the Louisiana Civ. Code Art. 3664; and by continuing to hold on to property legally and appropriately belonging to Mary Ann Lovell.

Hunt Oil Company has been uncooperative in bringing about a peaceful resolution to the subject matter: namely, Mr. Bryant Bender, who personally indicated to me that he would take Attorney David Newell, Newell and Newell's opinion over mine any day, because he had dealt with the firm for more than twenty five years in "assets and distribution" Meaker Glover White Estate aka Estate of Meaker Glover White; and Mr. Roger Adams, Acquisitions record checking title, Curative, who deliberated on the proceedings in Claiborne Parish Probate Docket No. 7734.

The course of proceedings and disposition included four court orders:

United States District Court, Eastern District of Louisiana,

Minute Entry, Duval, J. February 26, 1996

It Is Ordered that in accordance with Rule 19E of the Rules of this Court, this cause be referred to a United States Magistrate Judge for the Eastern District of Louisiana solely for the purpose of determining whether this Court has subject matter jurisdiction over the instant action after deciphering the pro se complaint and submission of Findings and Recommendations pursuant to 28 U.S.C. §636(b)(1)(B). *Minute Entry, Duval, J. April 16, 1996, Date of Entry, April 18, 1996.*

The Court has been informed that a related case, C. A. 94-3663, was filed in Section G of this Court.

In accordance with Local Rule 1.051E, the above captioned case is Ordered transferred to Section G for all future proceedings.

Minute Entry, Duval, J. April 16, 1996, Date of Entry April 19, 1996

In light of the transfer of this matter to Section G(3), the February 26, 1996 reference to Magistrate Fonseca is hereby Revoked.

and Order United States District Judge, Morey Sear

The foregoing motion considered;

It is hereby ordered that defendants be given leave to file the attached supplemental memorandum in support of their motion to dismiss.

New Orleans, Louisiana, this 3 day of May, 1996.

The district court's granting of a motion in accordance with *Memorandum and Order The Honorable Chief*

Judge Sear, Minute Entry, June 13, 1996 is not based on knowledge and merits of all filed suits involving the lead claim against Hunt Oil Company. Therefore, plaintiff appealed for justification.

"A warrantless search of a person's safety deposit box by a state actor can constitute a violation of the Fourth Amendment. *Watts v. Graves,* 720 F. 2d 1416, 1419 (5th Cir. 1983) (emphasis added). In this case, however, Lovell is unable to allege the presence of a state actor. Because I must construe the complaint liberally, I must consider whether Planters is a state actor within Section 1983. I find that it is not. See *Morast v. Lance,* 807 F.2d 926, 930 (11th Cir. 1987) (nationally chartered and regulated banks are not state actors under Section 1983.).

All of the claims involved the same party HUNT OIL COMPANY in their obstruction of justice to Plaintiff, Mary Ann Lovell. The intent is to make them liable for their mistakes.

Without the presence of a state actor, plaintiff fails to state a claim upon which relief can be granted in Civil Action No. 96-1184 and Civil Action No. 96-1317.

Appeals from the United States District Court, For the Eastern District of Louisiana (96-CV-584-G); On Appeal From The United States Court of Appeals for the Fifth Circuit,

December 26, 1996,

Memorandum To Counsel or Parties Listed Below

Regarding: Fifth Circuit Statement on Petitioners for Rehearing

or Rehearing En Banc

No. 96-30696 Lovell v. Hurford

USDC No. 96-CV-1317-G
96-CV-1184-G
96-CV-1181-G
96-CV-1180-G
96-CV-1178-G
96-CV-584-G

copy of the court's decision, and judgment entered under FRAP 36 in the above mentioned caption case.

Before SMITH, DUHE, AND BARKSDALE, Circuit Judges.

PER CURIAM:

Mary Ann Lovell, proceeding pro se, brought the consolidated actions, and numerous others, in the United States District Court for the Eastern District of Louisiana, registering numerous complaints against various defendants having to do with mineral production attributable to the interest of Meaker Glover White in minerals underlying certain lands in Claiborne Parish, Louisiana. Following consolidation of the captioned cases, the district court considered defendants's motions to dismiss pursuant to Rule 12 (b)(6) and granted each motion dismissing plaintiff's claims. We have carefully reviewed the briefs on file and the record and are satisfied that the reasons given by the district court in its Memorandum and Order filed June 14, 1996 in the consolidated matters are correct. We therefore affirm the district court's dismissal of the captioned cases essentially for the reasons given by it in its memorandum and order. AFFIRMED.

SUMMARY OF THE ARGUMENT

"A warrantless search of a person's safety deposit box by a state actor can constitute a violation of the Fourth Amendment. Watts v. Graves, 720 F. 2d 1416, 1419 (5th Cir. 1983) (emphasis added). In this case, however, Lovell is unable to allege the presence of a state actor. Because I must construe the complaint liberally, I must consider whether Planters is a state actor within Section 1983. I find that it is not. *See Morast v. Lance*, 807 F. 2d 926, 930 (11th Cir. 1987) (nationally chartered and regulated banks are not state actors under Section 1983)." Memorandum and Order, United States District Court, Morey L. Sear, Chief Judge No. 96-584.

Planters Bank and Trust Company of Claiborne Parish is organized to exercise the powers provided in the *Louisiana Statutes-Annotated Revised Statutes Sections* 6:1 to 8: End, and such other general powers as are appropriate to its purpose.

A bank receiving a gratuitous deposit of a box containing valuables is bound to use the same diligence in preserving its own property. *Levy v. Pike, 1873, 25 La. Ann. 630.*

There has been no serious dispute as to the right of a bank to rent safe-deposit boxes as a proper and legitimate banking transaction, and the right is now generally well recognized. *Cussen v. Southern California Sav. Bank,* 133 Cal 534, 65 P 1099.

In some jurisdictions at least, authority is conferred by statute upon banks and trust companies to engage in the safe deposit business by renting vaults, safe-deposit

boxes, and other receptacles. The operation of safe-deposit vaults by national banks is within the incidental power granted to such banks by Congress and therefore is not ultra vires. *Bank of California v. Portland, 58 S. Ct. 476.*

Planters Bank and Trust Company permitted an illicit person to take from the Safe Deposit Vault the Last Will and Testament of Mrs. Meaker Glover White, whereas on her copy at home in the home safe box she had written in her own handwriting that the main one was at Planters Bank and Trust Company. There were very important papers and other treasures left including cash moneys that were taken prior to Mary Lovell's entrance into said box at the Planters Bank and Trust company of Claiborne Parish, Louisiana.

In law, a safe-deposit company stands in such relation to the property as to make it liable if it negligently permits unauthorized persons to remove the contents of the safe-deposit box, *National Safe Deposit Co. v. Stead, 232 US 58, 58 L. ed 504, 34 S. Ct. 209.*

In law, a safe-deposit box company stands in such relation to the property as to make it liable if it negligently permits lawless persons to remove contents of the safe-deposit box, even under color of legal process.

Moreover, it is no defense to an action by the owner of property against a safe deposit company to recover for the loss of the property which was left with it for safe-keeping and which it negligently permitted to be taken by a third person, that after it went into the possession of third person it was seized under legal process against the owner; but if it can be shown that the owner had the

benefit of it by application, through regular legal proceedings, upon a judgment against him, such fact will go in mitigation of damages *Roberts v. Stuyvesant Safe Deposit Co. 123 NY 57, 25 NE 294.*

Planters Bank owed it to the deceased, Mrs. Meaker Glover White's successor, and relator, Mary Ann Lovell the duty to return or account for the property deposited. It was Planters obligation to make the contents of the safe-deposit box available to Lovell, and at any time she demanded to enter under the contract, after her initial entrance. If the property disappeared from the box, it is the duty of the company to produce it.

I was denied all rights as an ordinary customer at Planters Bank to review safe-deposit contract. The bank failed to cooperate with me in any way, and is liable to Mary Lovell for criminal act to enter and remove contents. *National Safe Deposit Co. v. Stead, 232 US 58, 58 L. ed 504, 34 S. Ct. 209.*

Planters Bank and Trust Company of Claiborne Parish, Louisiana, Haynesville, Louisiana is being sued for illegitimate delivery of bank box having delivered the box to the wrong bearer, the bank has breach its contract, and is responsible in the premises. *Fisk v. Germania Nat. Bank, 1888, 40 La. Ann. 820. 5 So. 532.*

When a safety deposit box is leased from any bank by a trust estate, the bank may permit the trustee or trustees so designated or appointed to have free access to the safety deposit box including the right to remove the contents thereof. Mary Lovell was the only person that should have had free access to Mrs. Meaker Glover White safe deposit vault.

When a safety deposit box is leased from any bank under the name of a person or persons with the right of access being given to said person or persons and to an agent or agents or deputy or deputies appointed by said person or persons, notwithstanding the death of any of the agents or deputies, the bank may permit the person or persons under whose name the safety deposit box is leased or any surviving agents or deputies to have free access thereto including the right to remove the contents thereof. In such cases, the signature of the person or persons entering the safety deposit box is full release and discharge of the bank, savings bank, or trust company permitting the entry as to any heir, legatee, creditor, or other person having rights or claims to funds or property of the decedent, nor shall any bank savings bank, or trust company permitting entry into the safety deposit box in accordance with the provisions of this Section thereby be liable for any estate, inheritance, or succession taxes which may be due this state in reference to Savings and loan association, access to safety deposit boxes. See *R. S. 6: 769.*

Just what role did Planters Bank play in Meaker Glover White Estate aka Estate of Meaker White? Just what was the character of Vice President Mike Waits? Why would Planters not release the information bearing the signature of the person that entered without authority No. 96-30729.

ARGUMENT

On appeal from the United States Court of Appeals for the Fifth Circuit,

December 26, 1996

Memorandum To Counsel or Parties Listed Below

Regarding: Fifth Circuit Statement on Petitions for Rehearing

or Rehearing En Banc

No. 96-30696 Lovell v. Hurford

USDC No. 96-CV-1317-G
96-CV-1184-G
96-CV-1181-G
96-CV-1180-G
96-CV-1178-G
96-CV-584-G

copy of the court's decision, and judgment entered under FRAP 36 in the above mentioned caption case illegal practice and procedure stemmed from Case No. 96-31163 On Appeal From The United States District Court, For The Fifth Circuit, New Orleans Division, In The United States Court of Appeals, For The Fifth Circuit, No. 96-31163 Lovell v. Newell

USDC No. 96-CV-1209-S

PRE-EMINENT POINT: THE DISTRICT COURT ERRED IN "ORDER AND JUDGMENT for failure to comply with the Court's Minute Entry of August 7, 1996;

It Is ORDERED, ADJUDGED AND DECREED that plaintiff's claims and demands are hereby DISMISSED,

WITHOUT PREJUDICE, FOR FAILURE TO PROSECUTE, against the defendant David Newell.

New Orleans, Louisiana, this ___ day of SEPT. 17 1996.

MARY ANN VIAL LEMMON
UNITED STATES DISTRICT JUDGE

The original complaint was filed April 5, 1996, date of entry 04/12/96 solely for the complete file of David M. Newell, Newell & Newell, Inc.

A memorandum in re: Legal Slip of Attorney David Newell, Date of Entry date 06/05/96 after the serving of the initial complaint and defendant refused to respond. There was no reply to the suit filed 04/12/96.

The case was reassigned to Judge Mary Ann V. Lemmon by Judge Marcel Livaudais Minute Entry, 7/23/96.

Appellant by plea for the complete file of Attorney David M. Newell re Estate of Meaker Glover White and Order Dismissed as premature AS STIP. by Magistrate Ivan L. Lemelle Date Signed: 8/20/96, Entry Date 08/22/96.

Newell and Newell law firm through personal and public records, concealed documents and reports transacted while he was attorney of records [FRAUD AND NEGATIVE OPINION PRIOR TO HIS WITHDRAWAL OF SUCCESSION OF MEAKER GLOVER WHITE, PROBATE DOCKET 7734, Second Judicial District, Claiborne Parish, Louisiana.] The stolen property is evidence and records due to Mary Lovell that were confiscated through his father, and business corporation Judge Paul Newell of

Haynesville and Homer, Louisiana "PETITION TO OPEN BAN BOX" FILED: OCT. 01 1992 Probate Docket 7734 Succession of Meaker Glover White, Second Judicial District, Claiborne Parish, Louisiana.

WHEREFORE, PETITIONER PRAYS that a Notary Public be appointed to make an inventory of the decedent's bank box #162 of Planters Bank & Trust Company, Haynesville, Louisiana; that Planters Bank & Trust Company be ordered to permit the Notary to examine the contents of Safety Deposit Box No. 162, or any other safety deposit box in the name of decedent; and the Notary Public be authorized to list the contents of said box or boxes and to withdraw from said box or boxes any life insurance policies of the life of the decedent payable to a named beneficiary.

NEWELL & NEWELL
A Professional Law Corporation
P. O. Box 26
Homer, LA 71040
(318) 927-2517
By: _____
DAVID M. NEWELL

AND Order

IT IS ORDERED THAT:

1. PAUL A. NEWELL, a Notary Public of this parish, enter and make an inventory of the contents of Safety Deposit Box #162, Planters Bank & Trust Company or any other safety deposit box in the name of Meaker Glover White at said bank; for any testament made by the decedent, MEAKER GLOVER WHITE and remove from that box all policies on the life of the

decedent payable to a designated surviving beneficiary; and list the contents of said box or boxes; and

11. The Planters Bank & Trust Company of Claiborne Parish permit PAUL A. NEWELL, Notary Public, to enter the bank box described and permit her withdrawal of the items mentioned above.

Homer, Louisiana, this March 17, 1992.

(JUDGE ROBERT BUTLER)
DISTRICT JUDGE

The controversy surrounding this facial valid, but illegal document allowed the Newell Corporation to "STEAL" the ESTATE OF MEAKER GLOVER WHITE AKA MEAKER GLOVER WHITE ESTATE from the one and only one Mrs. Meaker Glover White left her estate to Mary Ann Biddle Lovell.

Judge Paul Newell accompanied Mary Ann Lovell to Planters Bank and Trust Company, March, 1992, but refused to show me any documents related thereto, took me to his law practice in Haynesville, Louisiana across the street from his law office in Haynesville showed me a file folder with estate documents in the folder (literally held it up in his hand so the naked eye could see it, but refused to give it to me to READ). **Do you understand? Is this justice?**

The "woe of evilness" continued through numerous peaceful efforts in obtaining the complete file of Meaker Glover White Estate aka Estate of Meaker Glover White

with the Docket as of August 26, 1996 indicating proceeding 8/7/96 Minute Entry (8/7/96): ORDERED that plaintiff counsel enter default against defendant David Newell or show good cause in writing within thirty days why matter should not be dismissed for failure to prosecute as stipulated by Judge Mary Ann V. Lemmon Entry date 08/08/96.

Through numerous filed documents the court erred by not honoring the default judgment prepared and submitted by Mary Ann Lovell.

It is further understood why the same judge who is very familiar with Probate Docket 7734; 7765; and other related suits would deny me (Mary Ann Lovell) almost five years later a motion which by law he did not have to approve or disapprove, but the local judge wrote on the motion "Rule to Show Cause, Second Judicial District, Claiborne Parish, Homer, Louisiana Case No. 33142, 25 November 1996."

As the personal representative of the decedent, Mrs. Meaker Glover White, appellant did not need court authority to enter into a compromise or to modify an agreement, the court did not have to approve the agreement for Mary Lovell to remove contents from Planters Bank, but they did have to falsify records for Judge Paul Newell to act in said manner as described in "Petition to Open Bank Box.

Thus in accordance with Minute Entry, LIVAUDAIS, J., July 23, 1996, United States District Court, Eastern District of Louisiana, the court erred in the appellant effort to humbly recover through "Default Judgment"

property from the Newell's. Just what is Newell's purpose? Do they enjoy deceiving the public and hurting innocent law abiding citizens.

The impropriety of Attorney David Newell, Newell and Newell, et. al. and Planters Bank and Trust Company of Claiborne Parish, Louisiana is acute and the risk of malpractice is high where the Attorney In Fact is a member of the family and an interested person. *Dunham v. Dunham*, 204 Conn. 303, 528 A. 2d 1123 (1987).

Hunt Oil Company owed to Mary Lovell a duty to release interest of "assets and distribution" of Meaker Glover White Estate aka Estate of Meaker Glover White.

CONCLUSION AND PRAYER

Hunt Oil Company uses and profit from my property in carrying on business here in the United States with the federal and state agencies by violating my constitutional rights as owner of said property not only by transacting corrupt business in the State of Louisiana, but by continuing to control my funds illegally with its subsidiary companies and false claims that are on file in the Second Judicial District, Claiborne Parish, Louisiana, and other states.

"Memorandum and Order, United States District Court, Morey L. Sear, Chief Judge No. 96-584" petitioner's constitutional rights have been violated in all four cases and that the action was granted on a motion and not the merits of my claim. The notion of substantive "due process does place substantive limits on official

power, whereas procedural due process is concerned solely with the manner in which the government acts. My case in all stated causes have not been heard due to the United States Court Chief Judge Sear's granting the defendant's a motion to dismiss. To Mary Ann Lovell this is a deprivation of my official authority to act as a Forum State and a violation of my civil rights not to be heard before a Court of appropriate jurisdiction.

WHEREFORE, PETITIONER RESPECTFULLY PRAY that Hunt Oil Company abnegate all assets and distributions including interest and royalty, papers, and the like to the proper person, Mary Ann Lovell, without any further deference base on the records, filed In The Supreme Court Of The United States on June 6, 1995, and placed on the docket October 18, 1995; A copy of the original records are on file in the litigation: The United States District Court, and the United States Court of Appeals, Fifth Circuit.

WHEREFORE, PETITIONER FURTHER PRAY for such orders of this Court which it may deem suitable, fit and proper to provide relief to me which I may be entitled. Like in the words of Dr. Martin Luther King, Jr. LETTER FROM BIRMINGHAM JAIL "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial "outside agitator" idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds. Negroes have experienced grossly unjust treatment in the courts. As in so many past experiences, our hopes had been blasted, and

the shadow of deep disappointment settled upon us. . . . We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. For years now I have heard the word "Wait!" It rings in the ear of every Negro with piercing familiarity. This "Wait" has almost always meant "Never." We must come to see, with one of our distinguished jurists, that "justice too long delayed is justice denied (Letter From Birmingham Jail, April 16, 1963, Birmingham, Alabama)."

Again from "I HAVE A DREAM," "Nineteen sixty-three is not an end, but a beginning. But there is something that I must say to my people, who stand on the warm threshold which leads into the palace of justice. In the process of gaining our rightful place, we must not be guilty of wrongful deeds. Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred. We must forever conduct our struggle on the plain of dignity and discipline. . . . We cannot walk alone.

And as we talk, we must make the pledge that we shall always march ahead. We cannot turn back."

Respectfully submitted,

Counsel:
MARY ANN LOVELL
5005-58803R
United States Department
of the Treasury
Meaker Glover White Estate
726154238
MARY ANN LOVELL,
Attorney in Fact
303 Friendship Road
Haynesville, Louisiana 71038
(318) 247-3528
MARY ANN LOVELL
**Counsel of Record*

February 14, 1997

APPENDIX

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK
December 26, 1996

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW
Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 96-30696 Lovell v. Hurford
USDC No. 96-CV-1317-G
96-CV-1184-G
96-CV-1181-G
96-CV-1180-G
96-CV-1178-G
96-CV-584-G

Enclosed is a copy of the court's decision, and judgment has been entered under FRAP 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and will be considering filing a petition for *certiorari* in the United States Supreme Court, you do not need to file a motion for stay of mandate under FRAP 41. The issuance of the mandate does not affect the time, or your right, to file such a petition.

United States Court of Appeals
For the Fifth Circuit

No. 96-30696

Summary Calendar

MARY ANN LOVELL,

Plaintiff-Appellant

VERSUS

GARY HURFORD, President; RAY L. HUNT, Chairman; HUNT OIL COMPANY,

Defendants-Appellees

U. S. Court of Appeals

Filed December 26 1997

Charles R. Fulbruge 111, Clerk

No. 96-30696 Lovell v. Hurford
USDC No. 96-CV-1317-G
96-CV-1184-G
96-CV-1181-G
96-CV-1180-G
96-CV-1178-G
96-CV-584-G

United States Court of Appeals

FIFTH CIRCUIT

Appeals from the United States District Court
For the Eastern District of Louisiana
(96-CV-584-G)

Before SMITH, DUHE, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

---

[1] Pursuant to Local Rule 47.5, the Court had determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local rule 47.5.4.

Mary Ann Lovell, proceeding pro se, brought the consolidated actions, an numerous others, in the United States District Court for the Eastern District of Louisiana, registering numerous complaints against various defendants having to do with mineral production attributable to the interest of Meaker Glover White in minerals underlying certain lands in Claiborne Parish, Louisiana. Following consolidation of the captioned cases, the district court considered defendant's motions to dismiss pursuant to Rule 12 (b)(6) and granted each motion dismissing plaintiff's claims. . . . We therefore affirm the district court's dismissal of the captioned cases essentially for the reasons given by it in its memorandum and order. AFFIRMED.

MINUTE ENTRY
SEAR, CHIEF JUDGE
JUNE 13, 1996

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
June 14 3:08 PM '96
LORETTA G. WHYTE CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARY ANN LOVELL	*	CIVIL ACTION
	*	
VERSUS	*	No. 96-584,
GARY HURFORD,	*	c/w No. 96-1178, No. 96-1180,
RAY L. HUNT AND	*	No. 96-1181, No. 96-1184
HUNT OIL COMPANY	*	and No. 96-1317

SECTION "G"

MEMORANDUM AND ORDER

Background

Pro se plaintiff, Mary Ann Lovell, filed suit in the Eastern District of Louisiana on February 15, 1996, against defendants Gary Hurford, Ray L. Hunt and Hunt Oil Company ("Hunt") for alleged violations of her constitutional rights. Lovell claims that she is an heir of Meaker Glover White ("Meaker"), who was an heir of Jack Glover ("Glover"). Glover owned an interest in the minerals in certain tracts of land in Claiborne Parish, Louisiana on which Hunt Oil Company was producing oil. Meaker died in February 1992. Thereafter, Lovell filed succession proceedings as administratrix for Meaker's

estate ("the estate") in the Second Judicial District Court of Claiborne Parish, Louisiana.[1]

. . . .

ACCORDINGLY.

IT IS ORDERED that defendant's motions to dismiss in Civil Action No. 96-584, Civil Action No. 96-1178, Civil Action No. 96-1180, Civil Action No. 96-1181, Civil Action 96-1184 and Civil Action No. 96-1317 are **GRANTED.**[18]

MOREY L. SEAR
CHIEF JUDGE

DATE OF ENTRY JUNE 17 1996

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[1] Record Doc. No. 1, Second Judicial District Court for the Parish of Claiborne, State of Louisiana, Probate Docket No. 7734.

[18] In light of my finding, I need not address the defendants' other arguments.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION

MARY ANN LOVELL

FILED U. S. DISTRICT COURT JUNE 19 3:22PM '96

VERSUS NO. 96-1178 LORETTA G WHYTE CLERK

CONS W 96-584

MILLS, TIMMONS, AND FLOWERS, ETC. SECTION "G"

JUDGMENT

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, Mills, Timmons & Flowers, succession of Meaker White, Second Judicial District Court in and for Claiborne Parish, Louisiana, and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 19 day of June, 1996.

LORETTA G. WHYTE, CLERK

Approved as to form:

MOREY L. SEAR
CHIEF JUDGE
DATE OF ENTRY JUNE 19, 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION

MARY ANN LOVELL

FILED U. S. DISTRICT COURT JUNE 19 3:22PM '96

VERSUS NO. 96-1180 LORETTA G WHYTE CLERK

CONS W 96-584

SECTION "G"

JAMES HATCH, ATTORNEY, HATCH AND SMITH

JUDGMENT

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, James Hatch, Attorney, Hatch and Smith, and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 19 day of June, 1996.

LORETTA G. WHYTE, CLERK

Approved as to form:

MOREY L. SEAR
CHIEF JUDGE
DATE OF ENTRY JUNE 19, 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION

MARY ANN LOVELL FILED U. S. DISTRICT COURT JUNE 19 3:22PM '96

VERSUS NO. 96-1181 LORETTA G WHYTE CLERK

CONS W 96-584

SECTION "G"

JOHN MONTGOMERY, ATTORNEY
SECOND JUDICIAL DISTRICT

JUDGMENT

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants John Montgomery, Attorney. Second Judicial District, and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 19 day of June, 1996.

LORETTA G. WHYTE, CLERK

Approved as to form:

MOREY L. SEAR
CHIEF JUDGE
DATE OF ENTRY JUNE 19, 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION

MARY ANN LOVELL

FILED U. S. DISTRICT COURT JUNE 19 3:22PM '96

VERSUS NO. 96-1184 LORETTA G WHYTE CLERK

CONS W 96-584

SECTION "G"

GARY HURFORD, PRESIDENT, ET AL

JUDGMENT

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Gary Hurford, President, and Ray L. Hunt, Chairman, Hunt Oil Co., and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 19 day of June, 1996.

LORETTA G. WHYTE, CLERK

Approved as to form:

MOREY L. SEAR
CHIEF JUDGE
DATE OF ENTRY JUNE 19, 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION

MARY ANN LOVELL

FILED U. S. DISTRICT COURT JUNE 24 3:04PM '96

VERSUS NO. 96-1317

LORETTA G WHYTE CLERK

CONS W 96-584

SECTION "G"

WAYNE TIMMONS, MILLS, TIMMONS & FLOWERS

JUDGMENT

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Wayne Timmons, Mills, Timmons & Flowers, and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 24 day of June, 1996.

LORETTA G. WHYTE, CLERK

Approved as to form:

MOREY L. SEAR
CHIEF JUDGE
DATE OF ENTRY JUNE 24 1996

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

December 26, 1996

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 96-30696 Lovell v. Hurford
USDC No. 96-CV-1317-G
96-CV-1184-G
96-CV-1181-G
96-CV-1180-G
96-CV-1178-G
96-CV-584-G

Enclosed is a copy of the court's decision, and judgment has been entered under FRAP 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FRAPs 39 through 41, and Local Rules (LR) 35, 39, and 41 govern costs, rehearings, and mandates. **New LR's 35.2.10 and 40 require that a copy of the opinion or order sought to be reviewed shall be bound with the petition for rehearing or suggestion for rehearing en banc as an appendix but shall not be marked or annotated.** Please read carefully the Internal Operating Procedures (IOP's) following FRAP 40 and LR 35 for a discussion of when a

rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if a non-meritorious suggestion for en banc is made.

Direct Criminal Appeals. LR 41 provides that a motion for a stay of mandate under FRAP 41 shall not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate a substantial question is to be presented to the Supreme Court. Otherwise, the motion may be denied and the mandate issued immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and will be considering filing a petition for *certiorari* in the United States Supreme Court, you do not need to file a motion for stay of mandate under FRAP 41. The issuance of the mandate does not affect the time, or your right, to file such a petition.

The judgment entered provides that plaintiff-appellant pay to defendants-appellees the costs on appeal.

The judgment entered provides that plaintiff-appellant pay to defendants-appellees the costs on appeal.

Sincerely,

CHARLES R. FULBRUGE III,
Clerk
By: Deborah M. Taylor
Deborah Taylor,
Deputy Clerk

Enclosure

Ms Mary Ann Lovell
Mr Frederick W. Bradley
Ms Susan Phillip Tart
Mr J Broocks Greer III
Mr Gustave A Fritchie III
Mr John Montgomery

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 96-30696
Summary Calendar

MARY ANN LOVELL,

PLAINTIFF-APPELLANT,

VERSUS

GARY HURFORD, President; RAY L. HUNT, Chairman; HUNT OIL COMPANY,

Defendants-Appellees,

MARY ANN LOVELL,

Plaintiff-Appellant,

VERSUS

MILLS TIMMONS & FLOWERS, Succession of Meaker White, Second Judicial District Court in and for Claiborne Parish, Louisiana,

Defendant-Appellant,

MARY ANN LOVELL,

Plaintiff-Appellant,

VERSUS

JAMES HATCH, Attorney, Hatch & Smith,

Defendant-Appellee,

MARY ANN LOVELL,

Plaintiff-Appellant,

VERSUS

JOHN MONTGOMERY, Attorney,
Second Judicial District,

Defendant-Appellee,

MARY ANN LOVELL,

Plaintiff-Appellant,

VERSUS

GARY HURFORD, President; RAY L. HUNT,
Chairman, Hunt Oil Company,

Defendants-Appellees,

MARY ANN LOVELL,

Plaintiff-Appellant,

VERSUS

WAYNE TIMMONS, Mills Timmons & Flowers,

Defendant-Appellee,

Appeals from the United States District Court
For the Eastern District of Louisiana
(96-CV-584-G)

(Filed Dec. 26, 1996)

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Mary Ann Lovell, proceeding pro se, brought the consolidated actions, and numerous others, in the United States District Court for the Eastern District of Louisiana, registering numerous complaints against various defendants having to do with mineral production attributable to the interest of Meaker Glover White in minerals underlying certain lands in Claiborne Parish, Louisiana. Following consolidation of the captioned cases, the district court considered defendant's motions to dismiss pursuant to Rule 12 (b) (6) and granted each motion dismissing plaintiff's claims. We have carefully reviewed the briefs on file and the record and are satisfied that the reasons given by the district court in its Memorandum and Order filed June 14, 1996 in the consolidated matters are correct. We therefore affirm the district court's dismissal of the captioned cases essentially for the reasons given by it in its memorandum and order.

AFFIRMED.

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[1] Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

MINUTE ENTRY
SEAR, CHIEF JUDGE
JUNE 13, 1996

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

MARY ANN LOVELL	*	CIVIL ACTION
VERSUS	*	NO. 96-584, c/w No. 96-1178, No. 96-1180, No. 96-1181, No. 96- 1184 and No. 96-1317
GARY HURFORD, RAY L. HUNT AND HUNT OIL COMPANY		SECTION "G"

MEMORANDUM AND ORDER

(Filed Jun. 14, 1996)

Background

Pro se plaintiff, Mary Ann Lovell, filed suit in the Eastern District of Louisiana on February 15, 1996, against defendants Gary Hurford, Ray L. Hunt and Hunt Oil Company ("Hunt") for alleged violations of her constitutional rights. Lovell claims that she is an heir of Meaker Glover White ("Meaker"), who was an heir of Jack Glover ("Glover"). Glover owned an interest in the minerals in certain tracts of land in Claiborne Parish, Louisiana on which Hunt Oil Company was producing oil. Meaker died in February 1992. Thereafter, Lovell filed succession proceedings as administratrix for Meaker's estate ("the estate") in the Second Judicial District Court of Claiborne Parish, Louisiana.[1] In connection with these

[1] Record Doc. No. 1, Second Judicial District Court for the Parish of Claiborne, State of Louisiana, Probate Docket No. 7734.

proceedings, Hunt was ordered[2] by the District Court to pay all funds[3] due to Meaker's estate into the office of the Clerk of Court of Claiborne Parish pending a determination of ownership. Lovell attempted to force Hunt to turn over these funds directly to her. Dissatisfied with the Company's refusal to do so, Lovell filed the captioned lawsuit[4] in which she claims that: (1) defendants, by refusing to pay the funds directly to her, are violating her Constitutional rights; (2) Hunt fraudulently disbursed assets of Meaker's estate; and (3) Hunt's letter of December 29, 1995, violates her rights as a citizen of the State of Louisiana.[5]

In response, on April 10, 1996, defendants filed a motion to dismiss in which they assert that: 1) the court lacks subject matter jurisdiction over this case; 2) plaintiff can prove no set of facts consistent with the allegations in the complaint; 3) the complaint fails to comply with Fed.

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[2] Record Doc. No. 5, Page 2. The original order was dated October 30, 1995. A subsequent superseding order was issued on January 29, 1996 and filed into the record on February 7, 1996.

[3] At issue is approximately $33,000 in oil royalties owed to Meaker's estate.

[4] Lovell currently has eleven lawsuits pending against various individuals in the Eastern District of Louisiana, all of which relate indirectly to the claims Lovell makes in the captioned suit. Other than the two cases involving Hunt or its representatives (the captioned case and Civil Action No. 96-1184), the other cases were all filed between April 15 and April 26, 1996.

[5] Record Doc. No. 1, Letter from Wayne Breeland on behalf of Hunt Oil.

R. Civ. P. Rule 8; and 4) the court should abstain from exercising jurisdiction over this action.[6]

Subsequently to filing Civil Action No. 96-584, Lovell filed other lawsuits in the Eastern District of Louisiana, six of which I have consolidated into a single action. All six indirectly relate to the incidents about which Lovell complains in the lead case, Civil Action No. 96-584.

In Civil Action No. 96-1178, Lovell filed suit on April 1, 1996, against Mills, Timmons & Flowers alleging that defendants are unlawfully holding documents relating to the Succession of Meaker and requesting release of same.[7] Plaintiff claims to be the executor of Meaker's estate. In response, on May 21, 1996, defendants filed a motion to dismiss in which they assert that the court lacks subject matter jurisdiction over this case and that the complaint fails to state a claim upon which relief can be granted.[8]

In Civil Action No. 96-1180 Lovell filed suit on April 1, 1996, against the law firm of Hatch & Smith alleging that Hatch had knowledge of certain documents which were missing from Planters and that Hatch, attorney David Newell, Claiborne Parish tax assessor and the Sheriff of Claiborne Parish conspired to aid Newell in stealing assets from Glover's estate. She further alleges that certain papers were filed with the Internal Revenue Service by Newell and Hatch without her knowledge or consent as administratrix of the estate. In response, on April 24, 1996, defendants filed a motion to dismiss in

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[6] Record Doc. No. 5.

[7] Record Doc. No. 1. Page 2.

[8] Record Doc. No. 6.

which they assert that the court lacks subject matter jurisdiction and that the matter was filed in a court of improper venue.[9]

In Civil Action No. 96-1181, Lovell filed suit on April 1, 1996, against John W. Montgomery alleging that he forged her name on documents having to do with Meaker's succession. In addition, she alleges that he mishandled "estate matters." In response, on May 1, 1996, defendant filed a Motion to Dismiss in which he asserts that service of process was insufficient, the court lacks subject matter jurisdiction, venue is improper and the complaint fails to state a claim upon which relief can be granted.[10]

In Civil Action, No. 96-1184, Lovell filed suit on April 1, 1996, against defendants Gary Hurford and Ray L. Hunt. Lovell alleges that her privacy was violated when Planters Bank & Trust Company ("Planters") allowed unauthorized persons to enter and seize property left to her by Meaker and located in the safety deposit box owned by Meaker's succession.[11] Lovell also argues that the law firm of Newell and Newell[12] acted as Attorney in Fact without proper authority with regard to a release from a bond in Meaker's succession.[13] In response, on May 1, 1996, defendants filed a motion to dismiss in which they assert that the court lacks subject matter

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[9] Record Doc. No. 5.

[10] Record Doc. No. 5.

[11] Record Doc. No. 1, Page 2.

[12] Specifically David Newell.

[13] Record Doc. No. 1, Page 17.

jurisdiction, plaintiff fails to allege personal jurisdiction over defendants, plaintiff fails to explain why venue is proper in the Eastern District, the complaint fails to state a claim upon which relief can be granted, and the complaint should be dismissed pursuant to the doctrine of lis pendens because of the matter pending before me in Civil Action No. 96-584.[14]

In Civil Action No. 96-1317, plaintiff filed suit on May 15, 1996 against Mills, Timmons & Flowers and Wayne Timmons alleging that her constitutional rights under the Fourth and Sixth Amendments were violated when she was served with court papers. In response, defendants filed a motion to dismiss on June 4, 1996 in which they assert that the court lacks subject matter jurisdiction and the complaint fails to state a claim upon which relief can be granted.[15]

Analysis

It is axiomatic that the purpose of Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief; a Rule 12(b)(6) motion may not be used to resolve a contest about the facts or the merits of a case. 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 (1990) (*citing Murray v. Amoco Oil Co.*, 539 F.2d 1385 (5th Cir. 1976)). A court which considers a motion for a Rule 12(b)(6) dismissal must look only at the pleadings and accept the well-pleaded allegations in them as true. *St. Paul Ins. of Bellaire v. Afia*

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[14] Record Doc. No. 3.

[15] Record Doc. No. 7.

Worldwide Ins., 937 F.2d 274, 279 (5th Cir. 1991); *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 174-175 (1965). The complaint's allegations "should be construed favorably to the pleader," *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), and it should not be dismissed for failure to state a claim unless there is no doubt that the plaintiff can prove no set of facts which would entitle him to relief, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Lovell's complaints are no model of clarity and, among other defects, they all lack a clear allegation of the basis for the court's jurisdiction. In Civil Action No. 96-584, Lovell makes vague reference in the caption and the table of authorities to "Constitutional Rights . . . Article 1, §9 (CL.3) & 10 Article VI and Amendment XIV [1868] Section (1) U.S.C. § 1291" and "Constitution: Article One, Bill of Attainder, Article Six, Fourteenth Amendment, Bill of Rights, First Amendment, Fifth Amendment and the Sixth Amendment." The substance of her complaint, however, indicates that Lovell is not alleging Constitutional violations at all. Rather, she is complaining about the state court's order requiring Hunt to pay the royalties to the Clerk of Court instead of to her, as well as Hunt's compliance with this order.[16]

In Civil Action No. 96-1178, Lovell claims that Wayne Timmons and Mills, Timmons & Flowers are holding records belonging to Lovell. The complaint fails to set forth any cause of action against the defendants arising

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[16] *See* Record Doc. No. 1, Letter of Wayne Breeland, Hunt Oil Company, of December 11, 1995 addressed to Mary Ann Lovell.

under the Constitution. The only reference Lovell makes to any substantive law is to Federal Rule of Evidence 402. The Rules of Evidence provide no vehicle under which to assert a federal claim. In Civil Action No. 96-1180, Lovell again cites only Fed. R. Evid. 402 and claims, among other things, that "[t]he law corporation was mentioned in the administering of estate business without any of my input which was a constitutional violation of Mary Ann Lovell's rights as the successor . . . "[17]

Construing Lovell's *pro se* complaints as liberally as possible, *Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994), I find that in Civil Action No. 96-584, Civil Action No. 96-1178, Civil Action No. 96-1180 and Civil Action No. 96-1181, fail to state a claim upon which relief can be granted under federal law. There is no federal question upon which to base the exercise of federal jurisdiction. If anything, plaintiff's claims in these four cases are based on state law. Inasmuch as the parties to these lawsuits are citizens of the same state, the court lacks diversity jurisdiction over these disputes. *See* 28 U.S.C. § 1332. Thus, dismissal of these four actions is appropriate.

In Civil Action No. 96-1184, under a liberal construction of the complaint Lovell appears to be attempting to assert claims under 42 U.S.C. § 1983. To state a claim under 42 U.S.C. § 1983, Lovell must show that she has been deprived of a Constitutional or other federal right, privilege, or immunity by a person acting under color of state law. *Mississippi Women's Medical Clinic v. MiMillan*, 866 F.2d 788, 791 (5th Cir. 1989) (citing *Flagg Brothers v.*

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[17] Rec. Doc. No. 1, Page 1.

Brooks, 436 U.S. 149, 155 (1978)). Although it is unclear exactly what Lovell alleges, she refers to her "right of privacy" and "warrantless searches and seizures." On Page 11 of the complaint, Lovell states:

> The Last Will and Testament of Mrs. Meaker Glover White was seized from Planters Bank and Trust Company from a Safe Deposit Vault, a place where it had a right to be in a safe haven, but said company intently, permitted illegal seizure, and participated in efforts to destroy and damage the effects through ABUSED POWER OF HUNT OIL COMPANY.

Based on this language, I construe her allegations as an attempt to bring claims under the Fourth Amendment. The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). This provision proscribes only governmental action. *Id.*

A warrantless search of a person's safety deposit box by a state actor can constitute a violation of the Fourth Amendment. *Watts v. Graves*, 720 F.2d 1416, 1419 (5th Cir. 1983) (emphasis added). In this case, however, Lovell is unable to allege the presence of a state actor. Because I must construe the complaint liberally, I must consider whether Planters is a state actor within Section 1983. I find that it is not. *See Morast v. Lance*, 807 F.2d 926, 930 (11th Cir. 1987) (nationally chartered and regulated banks are not state actors under Section 1983).

In Civil Action No. 96-1317 plaintiff again attempts to bring a civil suit under 42 U.S.C. § 1983. However, she once again is unable to allege the presence of a state actor.

Without the presence of a state actor, plaintiff fails to state a claim upon which relief can be granted in Civil Action No. 96-1184 and Civil Action No. 96-1317.

ACCORDINGLY,

IT IS ORDERED that defendants' motions to dismiss in Civil Action No. 96-584, Civil Action No. 96-1178, Civil Action No. 96-1180, Civil Action No. 96-1181, Civil Action No. 96-1184 and Civil Action No. 96-1317 are **GRANTED.**[18]

IT IS FURTHER ORDERED that all future complaints and pleadings presented by plaintiff, whether pro se or through counsel, shall be verified by her or her counsel prior to submission and filing with the United States District Court for the Eastern District of Louisiana, and that she or her counsel shall include with every future complaint or pleading a list of all complaints previously filed on the same, similar or related causes of action and include therein a brief statement regarding the court's ruling is that previous action.

/s/ Morey L. Sear
MOREY L. SEAR
CHIEF JUDGE

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[18] In light of my finding, I need not address the defendants' other arguments.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARY ANN LOVELL	CIVIL ACTION
VERSUS	NO. 96-1317
WAYNE TIMMONS, MILLS, TIMMONS & FLOWERS	SECTION "G"

JUDGMENT

(Filed Jun. 24, 1996)

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, Wayne Timmons, Mills, Timmons & Flowers, and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 24th day of June, 1996.

/s/ Loretta G. Whyte
LORETTA G. WHYTE,
CLERK

Approved as to form:

/s/ Illegible
For MOREY L. SEAR
CHIEF JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARY ANN LOVELL — CIVIL ACTION

VERSUS — NO. 96-1184
CONS W/96-584

GARY HURFORD, PRESIDENT, ET AL — SECTION "G"

JUDGMENT

(Filed Jun. 19, 1996)

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Gary Hurford, President, and Ray L. Hunt, Chairman, Hunt Oil Co., and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 19th day of June, 1996.

/s/ Loretta G. Whyte
LORETTA G. WHYTE,
CLERK

Approved as to form:

/s/ Morey L. Sear
MOREY L. SEAR
CHIEF JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARY ANN LOVELL	CIVIL ACTION
VERSUS	NO. 96-1181 CONS W/96-584
JOHN MONTGOMERY, ATTORNEY SECOND JUDICIAL DISTRICT	SECTION "G"

JUDGMENT

(Filed Jun. 19, 1996)

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, John Montgomery, Attorney, Second Judicial District, and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 19th day of June, 1996.

/s/ Loretta G. Whyte
LORETTA G. WHYTE,
CLERK

Approved as to form:

/s/ Morey L. Sear
MOREY L. SEAR
CHIEF JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARY ANN LOVELL — CIVIL ACTION

VERSUS — NO. 96-1180
CONS W/96-584

JAMES HATCH, ATTORNEY
HATCH AND SMITH — SECTION "G"

JUDGMENT

(Filed Jun. 19, 1996)

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, James Hatch, Attorney, Hatch and Smith, and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 19th day of June, 1996.

/s/ Loretta G. Whyte
LORETTA G. WHYTE,
CLERK

Approved as to form:

/s/ Morey L. Sear
MOREY L. SEAR
CHIEF JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARY ANN LOVELL	CIVIL ACTION
VERSUS	NO. 96-1178 CONS W/96-584
MILLS, TIMMONS, AND FLOWERS, ETC.	SECTION "G"

JUDGMENT

(Filed Jun. 19, 1996)

Considering the written memorandum and order of the Court on file;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Mills, Timmons & Flowers, succession of Meaker White, Second Judicial District Court in and for Claiborne Parish, Louisiana, and against plaintiff, Mary Ann Lovell, dismissing said plaintiff's complaint with prejudice.

Dated at New Orleans, Louisiana, this 19th day of June, 1996.

/s/ Loretta G. Whyte
LORETTA G. WHYTE,
CLERK

Approved as to form:

/s/ Morey L. Sear
MOREY L. SEAR
CHIEF JUDGE

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

January 17, 1997

Ms Loretta Whyte, Clerk
Eastern District of Louisiana, New Orleans
United States District Court
500 Camp Street
Room C-151
New Orleans, LA 70130

No. 96-30696 Lovell v. Hurford
USDC No. 96-CV-1317-G
96-CV-1184-G
96-CV-1181-G
96-CV-1180-G
96-CV-1178-G
96-CV-584-G

Enclosed, for the district court only, is a certified copy of the judgment issued as the mandate.

Enclosed, for the district court only, is a copy of the court's opinion.

Record/original papers/exhibits are returned:

(7) Volumes ( ) Envelopes ( ) Boxes

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: /s/ Amanda Sutton/van
Amanda Sutton, Deputy Clerk

/van

cc: (letter only)
Honorable Morey L Sear
Ms Mary Ann Lovell
Mr Gustave A Fritchie III
Mr Fredrick W Bradley
Mr J Broocks Greer III
Mr John Montgomery

No. 96-1308

Supreme Court, U.S.
FILED
MAR 20 1997
CLERK

In The

Supreme Court of the United States

October Term, 1996

MARY ANN LOVELL,

Petitioner,

vs.

GARY HURFORD, President; RAY L. HUNT, Chairman; HUNT OIL COMPANY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

FREDERICK W. BRADLEY
Counsel of Record
KATHLEEN F. HOBSON
LISKOW & LEWIS
Attorneys for Respondents Gary Hurford, Ray L. Hunt and Hunt Oil Company
701 Poydras Street
Suite 5000
New Orleans, Louisiana 70139-5099
(504) 556-4114

LIST OF INTERESTED PARTIES

The Petitioner is Mary Ann Lovell.

The Respondents are Gary Hurford, Ray L. Hunt and Hunt Oil Company. Frederick W. Bradley is counsel of record for the Respondents. The parent company is Hunt Consolidated, Inc. The nonwholly owned subsidiaries are: Hunt Oil Company of Australia, L.L.C.; Yemen Refining and Marketing Company; Yemen Exploration and Production Company, Hunt Overseas Exploration Company, L.P.; Paloma Pipe Line Company.

Other interested parties, who were defendants in one or more of the consolidated actions below, are: (1) Mills Timmons & Flowers, Succession of Meaker White, Wayne Timmons, represented by J. Broocks Greer, III; (2) James Hatch, Hatch & Smith, represented by Gus A. Fritchie, III, Montgomery, Barnett, Brown, Read, Hammond & Mintz; and (3) Kenneth Hubbard, represented by John W. Montgomery.

TABLE OF CONTENTS

	Page
List of Interested Parties	i
Table of Contents	ii
Table of Citations	iii
Statement of the Case	1
A. Course of Proceedings and Disposition of the Case Below	1
B. Corrections of Misstatements in the Petition	4
Reasons for Denying the Writ	5
I. No Valid Reasons Exist For Granting Certiorari.	5
II. The United States Court Of Appeals For The Fifth Circuit Was Correct In Affirming The District Court's Dismissal Of The Consolidated Cases.	6
III. Hunt Oil Company Does Not Have A Duty To Release "Assets And Distribution" Of The Meaker Glover White Estate.	7
IV. Hunt Oil Company Does Not Violate Petitioner's "Constitutional Rights" By Depositing Funds Into The Registry Of The Court.	8
Conclusion	9

Contents

Page

TABLE OF CITATIONS

Cases Cited:

Carter by Carter v. Cornwell, 983 F.2d 52 (6th Cir. 1993) 7

Cinel v. Connick, 15 F.3d 1338 (5th Cir.), *cert. denied*, 115 S. Ct. 189 (1994) 6

Rules Cited:

Fed. R. Civ. P. 8 2

Fed. R. Civ. P. 12(b)(6) 5, 6

Supreme Court Rule 10 ..... 5, 7

Supreme Court Rule 10(a) 6

Respondents request that the Court deny the Petition for Writ of Certiorari seeking a review of a decision by the United States Court of Appeals for the Fifth Circuit. The *per curiam* opinion was filed December 26, 1996, and a copy of the decision is included in the Petition.[1]

STATEMENT OF THE CASE

Respondents respectfully oppose the Petition for Writ for Certiorari filed by Mary Ann Lovell ("Lovell"). Although her Petition is disjointed and virtually incoherent, the essence of the complaint appears to be that a bank, Planter's Bank & Trust Company, permitted an "illicit person" to take various papers and "other treasures" from the safe deposit box of the decedent, Mrs. Meaker Glover White. Lovell further claims that she was the only person that should have had access to the safe deposit box, presumably on the grounds that she was the administratrix of the White Estate ("the Estate").

Lovell also seems to complain that Respondent, Hunt Oil Company ("Hunt"), owed her a duty to release certain assets of the Estate directly to her. Notably Lovell makes no allegations against the individual Respondents, Ray L. Hunt and Gary Hurford.

A. Course of Proceedings and Disposition of the Case Below

Pro se Petitioner Lovell filed suit in the Eastern District of Louisiana on February 15, 1996 against Gary Hurford, Ray L.

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1. Petitioner attached an incomplete copy of the *per curiam* decision as Appendix 2-3 in the Petition. That excerpted copy left out the following language: "We have carefully reviewed the briefs on file and the record and are satisfied that the reasons given by the District Court in its Memorandum and Order filed June 14, 1996, in the consolidated matters are correct." Ms. Lovell does include the entirety of the *per curiam* decision, however, on page 12 of her Petition in the "Statement of the Case" section.

Hunt and Hunt Oil Company for alleged violations of her constitutional rights. (U.S.D.C. No. 96-CV-584-G). Rec. Vol. 1, p. 194. As with all of her pleadings and briefs, the Complaint contained a hodge-podge of references to historical, biblical, legal and personal facts — arranged in a manner which was virtually impossible to comprehend. Notwithstanding the Complaint's lack of clarity, Hunt believed that the essence of Lovell's cause of action was as follows. Lovell claimed that she is an heir of Meaker Glover White ("Meaker"), who was an heir of Jack Glover ("Glover"). Glover owned an interest in the minerals in certain tracts of land in Claiborne Parish, Louisiana, on which Hunt Oil Company was producing oil. Meaker died in February 1992. Thereafter, Lovell filed succession proceedings as administratrix for the Estate in the Second Judicial District Court of Claiborne Parish, Louisiana (the "state court"). Rec. Vol. 1, p. 13. In connection with these proceedings, the state court had ordered Hunt to pay all funds due to the Estate into the office of the clerk of court of Claiborne Parish pending a determination of ownership of those funds. Rec. Vol. 1, pp. 272-275. Contrary to that order, Lovell demanded that Hunt turn over those funds directly to her. Dissatisfied with the company's refusal to do so, Lovell filed a lawsuit in which she claimed that: (1) Defendants, by refusing to pay the funds directly to Lovell, violated her constitutional rights; (2) Hunt fraudulently disbursed assets of Meaker's estate; and (3) Hunt's letter of December 29, 1995, violated her rights as a citizen of the State of Louisiana. As noted above, the Complaint provided no clear explanation of any of these points.

On April 10, 1996, defendants filed a Motion to Dismiss in which they asserted that: (1) the Court lacked subject matter jurisdiction over the case; (2) Plaintiff was not able to prove a set of facts consistent with the allegations in the Complaint; (3) the Complaint failed to comply with Fed. R. Civ. P. 8; and (4) the Court should abstain from exercising jurisdiction over this action.

After filing Civil Action No. 96-584, Lovell filed six other *pro se* lawsuits in the Eastern District of Louisiana. All of these suits related generally to Lovell's alleged status as "heir" to the Estate. These cases were consolidated into a single action, *sua sponte,* by Chief Judge Morey L. Sear.

The other action involving Respondents Hurford and Hunt was U.S.D.C. No. 96-CV-1184-G, which was filed by Lovell on April 1, 1996. Rec. Vol 5, p. 68. Ironically, the Complaint did not mention Hurford or Hunt throughout its text. The Complaint was cumbersome and convoluted, but it appeared that a violation of privacy argument was being made against a bank for its failure to prevent certain materials from being taken from a safety deposit box. Lovell alleged that her privacy was violated when Planter's Bank & Trust Company ("Planter's") allowed unauthorized persons to enter and seize property left to her by Meaker and located in the safety deposit box owned by Meaker's succession. Lovell also argued that the law firm of Newell & Newell, specifically David Newell, acted as attorney-in-fact without proper authority with regard to a release from a bond in Meaker's succession. As noted, the Complaint made no allegations whatsoever against Hurford and Hunt (both of whom are executives with Hunt Oil).

In response to the later suit, Respondents filed a Motion to Dismiss in which they asserted that: (1) the Court lacked subject matter jurisdiction; (2) plaintiff failed to allege personal jurisdiction over defendants; (3) plaintiff failed to explain why venue was proper in the Eastern District; (4) the Complaint failed to state a claim upon which relief could be granted; and (5) the Complaint should be dismissed pursuant to the doctrine of *lis pendens* because of the matters pending before the Court in Civil Action No. 96-584.

After studying the briefs, Chief Judge Sear, in a Minute

Entry dated June 13, 1996, dismissed Civil Action Nos. 96-584 and 96-1184 for failure to state a claim upon which relief could be granted under federal law. The Minute Entry was filed on June 17, 1996. In addition, Chief Judge Sear dismissed on similar grounds the other civil actions filed by Lovell and consolidated by him. Rec. Vol. 1, pp. 13-21. The judge also ordered Lovell and any future counsel to verify all future complaints and pleadings and provide a list of all lawsuits previously filed on related causes of action.

Lovell then appealed to the Court of Appeals for the Fifth Circuit. There she argued that "treasures were taken from the safe deposit box at Planter's Bank" and that the payment of the royalties by Hunt Oil Company into the office of the clerk of court indicated that she was "not recognized" by Hunt Oil Company and the Second Judicial Court in and for Claiborne Parish, Louisiana. On December 26, 1996, the Fifth Circuit issued a *per curiam* opinion in which it affirmed the district court's dismissal of the consolidated cases for the reasons given by the trial court in its memorandum and opinion.

B. Corrections of Misstatements in the Petition

The facts and argument in Lovell's Petition, as in all other legal papers filed by her, are virtually incomprehensible. Indeed, her "Argument" to this Court must literally be read between the lines because so much of the "Argument" merely consists of excerpts from various court papers. Very little in this Petition even relates to Hunt Oil Company, and there is nothing in the Petition that alleges or even discusses the liability of the two individual Respondents, Messrs. Hunt and Hurford.

Lovell asserts that someone had access to a safe deposit box rented by Mrs. Meaker Glover White, who died in 1992. Lovell further asserts that she was the only person who should

have had access to the box as the administratrix of that Estate. Lovell does not argue that Respondents had any connection with the safe deposit box or that Respondents did anything at all in connection with the safe deposit box.

With specific regard to Respondents, however, there are certain misstatements that must be corrected. First, Hunt did not disburse some of the Estate to parties "not rightful parties" (Petition, p. 9). Rather, Hunt deposited suspended monies and royalty revenues attributable to the Estate into the registry of the Court. This action was taken to comply with the January 29, 1996 order of the state court. Second, Hunt has not "continued inappropriately to hold on to without proper cause 'fruits, assets and distributions' " (Petition, p. 9). Rather, Hunt merely followed the order of the state court by depositing funds into the court's registry. Third, Hunt did not "continu[e] to hold on to property legally and appropriately belonging to [petitioner] Mary Ann Lovell." Instead, and again, Hunt merely followed the directive of the state court in its order which required that the funds "be distributed solely by order of this Court." Therefore, it is also a misstatement for Petitioner to claim that "Hunt Oil Company has been uncooperative in bringing about a peaceful resolution to this subject matter." (Petition, p. 9).

REASONS FOR DENYING THE WRIT

I.

NO VALID REASONS EXIST FOR GRANTING CERTIORARI.

None of the considerations cited in Rule 10 of the Supreme Court Rules are present here. The District Court dismissed the actions for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil

Procedure. Specifically, in its Memorandum, Chief Judge Sear stated that Lovell was not alleging constitutional violations at all. Instead, she was simply complaining about the state court's order requiring Hunt Oil Company to pay the royalties to the clerk of court instead of to her and about Hunt's compliance with that order. Obviously, the proper forum for Lovell's claim is the state court in Louisiana. The District Court also stated that there was no federal or diversity jurisdiction upon which to base the exercise of federal jurisdiction. The District Court appropriately observed that the claims were more properly based on state law.

The United States Court of Appeals for the Fifth Circuit affirmed the trial court for the reasons in the District Court's memorandum. The *per curiam* opinion of the Fifth Circuit was rendered, and the decision was unpublished indicating that the decision had no legal significance.

There are no compelling reasons to grant Lovell's Petition. There is no court of appeals decision that is in conflict with other courts of appeals on an important matter. There is no important federal question. Indeed, there is no federal jurisdiction. This is not a case where a lower court has "departed from the accepted and usual course of judicial proceedings." Rule 10(a).

II.

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT WAS CORRECT IN AFFIRMING THE DISTRICT COURT'S DISMISSAL OF THE CONSOLIDATED CASES.

Courts of appeals review Rule 12(b)(6) dismissals *de novo*. *Cinel v. Connick*, 15 F.3d 1338, 1341 (5th Cir.), *cert. denied*, 115 S. Ct. 189 (1994). Dismissals are proper when there are no

facts that would allow a plaintiff to recover. *Carter by Carter v. Cornwell,* 983 F.2d 52, 54 (6th Cir. 1993). Chief Judge Sear at the district level and a three-judge panel at the appellate level unanimously agreed that there were no allegations made by Lovell that would allow her to pursue her claims in federal court. There was no diversity jurisdiction because there was no allegation that the claim exceeded $50,000. Nor was there any federal question. Both lower courts acted properly, and there is nothing for this Court to review.

III.

HUNT OIL COMPANY DOES NOT HAVE A DUTY TO RELEASE "ASSETS AND DISTRIBUTION" OF THE MEAKER GLOVER WHITE ESTATE.

This Court does not have jurisdiction to consider the ruling of the Second Judicial District Court for and in the Parish of Claiborne, which required Hunt Oil Company to deposit royalty revenues into that state court's registry. The state court did not decide a federal question such that jurisdiction by this Court would be appropriate under Rule 10 of the Supreme Court Rules. Indeed, the Louisiana court decided no federal question and was not presented with one.

Rather, the Louisiana court merely sought to protect the assets of an estate by requiring royalty revenues to be deposited into the court's registry. Claimants such as Lovell were free to join in that action to pursue any rights they might have. The state court's order was made pursuant to a motion by two of the estate's heirs and devisees. Neither of these was Mary Ann Lovell. Indeed, Lovell is not even named as an heir, legatee, devisee, or executor in the Will of the decedent Meaker Glover White. Apparently, Lovell claims that she is an heir because she and Meaker Glover White shared the same father although not the same mother.

Hence, the question decided by the Louisiana court was simply one of state procedure — requiring a stakeholder to place funds into the registry of the court until the succession (probate) was closed and the assets of the estate distributed. Lovell's remedy, if any, is in that forum.

IV.

HUNT OIL COMPANY DOES NOT VIOLATE PETITIONER'S "CONSTITUTIONAL RIGHTS" BY DEPOSITING FUNDS INTO THE REGISTRY OF THE COURT.

Respondents do not violate Lovell's Constitutional rights by following a state court's directive to deposit funds into the court's registry pending the distribution of the Estate's assets. Lovell cites no authority for her proposition that Respondents' actions constitute such a violation. In fact, the United States Constitution does not provide Lovell such a right. Moreover, Lovell is *not* the owner of the property. Rather, she merely claims an ownership interest on the grounds that she is an heir. Clearly, Lovell's proper recourse is in state court, where she can pursue her state law claim, appeal any decision to the Louisiana Court of Appeals, and, thereafter, seek review from the Louisiana Supreme Court. She has chosen not to follow that route.

CONCLUSION

Lovell has provided no reasons why this Court should grant a writ of certiorari. The decisions of the lower federal courts were appropriately decided, and the pleadings in the state court establish that Respondents properly followed the order of the state court.

Respondents respectfully request that this Court deny Lovell's Petition for Writ of Certiorari.

Respectfully submitted,

FREDERICK W. BRADLEY
Counsel of Record
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